

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

JASON DON SELLS  
TDCJ-CID No. 0232552,

Plaintiff,

v.

MIGUEL FLOREZ, *et al.*,

Defendants.

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2:20-CV-020-Z-BR

**FINDINGS, CONCLUSIONS AND RECOMMENDATION**  
**TO DISMISS FOUR DEFENDANTS**

Plaintiff Jason Don Sells, acting *pro se*, filed suit pursuant to 42 U.S.C. § 1983. (ECF No. 3). Plaintiff was granted permission to proceed *in forma pauperis*. (ECF No. 25).

On September 5, 2023, Defendants Scott Giles, Brian Thomas and Steve White filed a Motion to Dismiss on qualified immunity grounds, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (ECF No. 41). On October 12, 2023, presumably in response to the Motion, Plaintiff filed a voluntary dismissal of these Defendants. (ECF No. 45). Therefore, Defendants Scott Giles, Brian Thomas and Steve White should be dismissed from this case and their Motion to Dismiss denied as moot.

Further, service was returned unexecuted on Defendant Brandon Phillips, so the Court ordered Plaintiff to, by September 19, 2023, either provide an address for service of process that is different from the one where service had been attempted, or complete service of process himself. (ECF No. 44). As of the date of this Order, Plaintiff has neither provided a new address for Phillips nor indicated that he intends to effect service himself. Instead, Plaintiff also seeks to dismiss his claims against Phillips. Therefore, Defendant Brandon Phillips should be dismissed from this case.

RECOMMENDATION

It is the RECOMMENDATION of the United States Magistrate Judge to the United States District Judge that Defendants Scott Giles, Brian Thomas, Steve White and Brandon Phillips be DISMISSED from this case, and the pending Motion to Dismiss filed by Giles, Thomas, and White (ECF No. 41) be DENIED as moot.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Findings, Conclusions and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED October 13, 2023.

  
LEE ANN RENO  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Findings, Conclusions and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge and accepted by the district court. *See Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1), *as recognized in ACS Recovery Servs., Inc. v. Griffin*, 676 F.3d 512, 521 n.5 (5th Cir. 2012); *Rodriguez v. Bowen*, 857 F.2d 275, 276–77 (5th Cir. 1988).